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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,936	12/29/2000	Leona G. Fleissman	CR-25U-US	9024

7590 12/03/2003

RUPA SEN  
AVON PRODUCTS, INC.  
AVON PLACE  
SUFFERN, NY 10901

EXAMINER

HOWARD, SHARON LEE

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 12/03/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/750,936

Applicant(s)

FLEISSMAN ET AL.

Examiner

Sharon L. Howard

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

In view of paper no.9, a new office action will be sent.

Claim 35 has been amended.

New claims 41-67 have been added.

Claims 1-17,35-39,41-67 are pending.

***Claim Rejections - 35 USC § 112***

Claims 1-17,38,41-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1-17, the term "virtually simultaneously" renders the claim indefinite because the term "virtually simultaneously" is a relative term and the term "virtually simultaneously" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Also, claims 1-17 are indefinite because according to the "1st Law of Thermodynamics", heat should be transferred from a first component and then to a second component. Heating does not solidify the first component. Clarification is requested.

The word "including" in claim 38 renders the claim indefinite because the claim include elements not actually disclosed (those encompassed by "including"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35-39 and newly added claims 41-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Royce (U.S. Patent No. 5,688,839) in view of Tsipursky et al. (U.S. Patent No. 5,721,306).

Royce teaches a composite product having a "marbleized appearance" (i.e. a distinctive and vivid separation of colors). Royce teaches that each type of background resin may be different from other types of background resin (col.2, lines 51-67, col.3, lines 2-5). Royce teaches that the product has two types of colored resin particles wherein each type of particles is of a different color and is irradiated (col.1, lines 6-10, col.2, lines 21-63), dispersing agents such as waxes (col.3, lines 56-59), and the purpose of the agents are known for aiding in evenly dispersing the colorants throughout the resin (col.3, lines 63-65). Royce teaches that other additives are known in the art (col.3, lines 60-61)

Royce teaches that the product is prepared by the injection molding process (col.5, lines 14-41), and that the background component and accent component are uniformly mixed and extruded. Royce further teaches that the colorants of the background component are dispersed throughout the colorless natural resin creating the desired background color (col.5, lines 14-36, see Examples 1-3 at cols. 5-7).

Although Royce teaches that other additives are known in the art, Royce does not particularly teach a smectite clay dispersed in a solvent.

However, Tsipursky teaches viscous solvent compositions which are known to be useful for carrying pigments and cosmetics (col.1, lines 16-25). Tsipursky teaches a smectite clay (col.1, lines 60-66, col.3, lines 56-64, col.9, lines 31-67, col.10, lines 1-49, col.15, lines 23-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Tsipursky in view of Royce. One having ordinary skill in the art would have been motivated to include smectite clay dissolved in a solvent, for the purpose of obtaining a composite product which has a "marbleized appearance" and smectite clay dispersed in a solvent therein.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (703) 308-4359. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-3121.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

*Sharon Howard*

Sharon Howard  
November 25, 2003

  
THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600